

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CHAD S. JOHNSON,  
Plaintiff,

v.

SUPERINTENDENT ROBERT MORTON;  
EDWARD BURNETT, Deputy of Security;  
SERGEANT S. PETRIE; LT. KAILVETTI;  
OFFICER D. ALLEN; CORRECTION  
OFFICER MASON HAMILTON;  
CORRECTION OFFICER TRAVIS SMALL;  
CORRECTION OFFICER JAMES MAKEL;  
and John Doe 4,

Defendants.

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 6/1/2021

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**SECOND AMENDED**  
**ORDER OF SERVICE**

21 CV 986 (VB)

Plaintiff, proceeding pro se and in forma pauperis, brings claims under 42 U.S.C. § 1983 for violations of his constitutional rights.

On March 17, 2021, the Court issued an Order of Service ordering the Office of the New York State Attorney General (“NYAG”) to ascertain the identity and address of several John or Jane Doe defendants. (Doc. #12). The Court ordered that within thirty days of receiving this information, plaintiff must file an amended complaint naming the John or Jane Doe defendants. (Id.). On April 27, 2021, NYAG the Court issued an Amended Order of Service extending NYAG’s deadline to identify additional remaining unidentified defendants to May 31, 2021.

On May 31, 2021, NYAG wrote to the Court identifying three additional John Doe defendants and the John Doe Warden of Downstate Correctional Facility. (Doc. #21). NYAG also informed the Court it has been unable to identify “John Doe 4,” who allegedly assisted John Doe 2 (Correction Officer Travis Small) and John Doe 3 (Correction Officer James Makel) in searching plaintiff’s cell and packing and transporting his belongings from Downstate Correctional Facility to Great Meadows Correctional Facility. (Complaint at 6–7).

In addition, NYAG notes the U.S. Marshals Service docketed a Receipt and Return of Process for a John Doe Deputy of Security, who was served at Downstate Correctional Facility on March 17, 2021. NYAG correctly points out that this John Doe defendant has since been identified as Edward Burnett, who no longer works at Downstate Correctional Facility and that the John Doe Deputy of Security has been terminated from the docket. According to NYAG, defendant Edward Burnet will return the Marshal's acknowledgement of Receipt of the Summons and Complaint Form upon receipt. Accordingly, the Clerk is instructed to strike Document #20 from the docket because it appears the wrong individual was served.

Accordingly, it is HEREBY ORDERED that, by June 25, 2021, plaintiff shall write a letter to the Court and NYAG providing any additional details he possesses about the identity of the "John Doe 4."

In addition, to allow plaintiff to effect service on the newly-identified defendants through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form ("USM-285 form") for the newly-identified defendants included in the appendix to this Order. The Clerk of Court is further instructed to issue a summons listing those defendants and deliver to the Marshals Service all paperwork necessary for the Marshals Service to effect service upon the newly-identified defendants. The service addresses for those defendants are appended to this Order.

**Plaintiff is instructed not to file an amended complaint at this time.** Because NYAG is continuing to identify other defendants, the Court will instruct plaintiff to file an amended complaint after NYAG has completed its investigation. In addition, the deadline for NYAG to comply with the Court's March 17, 2021 Order is extended to July 16, 2021.

It is plaintiff's responsibility to ensure that service is made within 90 days of the date the summons is issued and, if necessary, to request an extension of time for service. See Meilleur v. Strong, 682 F.3d 56, 63 (2d Cir. 2012). Plaintiff also must notify the Court in writing if plaintiff's address changes, and the Court may dismiss the action if he fails to do so.

## CONCLUSION

Plaintiff is directed to file a letter with the Court and defendants by June 25, 2021, providing any additional details he possesses regarding the identity of "John Doe 4."

NYAG's deadline to comply with the Court's March 17, 2021 Order to identify the remaining John or Jane Doe defendants pursuant to Valentin v. Dinkins, 121 F.3d 72 (2d Cir. 1997) is extended from May 31, 2021 to July 16, 2021.

The Clerk is directed to terminate John Doe 1, John Doe 2, John Doe 3, and Warden of Downstate Correctional Facility as defendants from the docket and to add to the docket defendants Correction Officer Mason Hamilton, Correction Officer Travis Small, Correction Officer James Makel, and Superintendent Robert Morton. Additionally, the Clerk is instructed to add John Doe 4 to the docket.

The Clerk is directed to strike Document #20 from the docket.

The Court directs the Clerk of Court to complete the USM-285 form with the address for the listed defendants and deliver all documents necessary to effect service on those defendants to the U.S. Marshals Service.

Chambers will mail a copy of this Order to plaintiff at the address on the docket.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444–45 (1962).

Dated: June 1, 2021  
White Plains, NY

SO ORDERED:



Vincent L. Briccetti  
United States District Judge

## APPENDIX

- 1) Correction Officer Mason Hamilton  
Auburn Correctional Facility  
135 State Street  
Auburn, NY 13024
- 2) Correction Officer Travis Small  
Downstate Correctional Facility  
121 Red Schoolhouse Road, P.O. Box 445  
Fishkill, NY 12524
- 3) Correction Officer James Makel  
Downstate Correctional Facility  
121 Red Schoolhouse Road, P.O. Box 445  
Fishkill, NY 12524
- 4) Superintendent Robert Morton  
Department of Corrections and Community Supervision  
1220 Washington Avenue  
Albany, NY 12226